

Senate Engrossed

State of Arizona
Senate
Forty-fifth Legislature
First Regular Session
2001

CHAPTER 309

SENATE BILL 1129

AN ACT

AMENDING SECTIONS 38-881, 38-885, 38-893 AND 38-902, ARIZONA REVISED
STATUTES; RELATING TO THE CORRECTIONS OFFICER RETIREMENT PLAN.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 38-881, Arizona Revised Statutes, is amended to
3 read:

4 38-881. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Accidental disability" means a physical or mental condition that
7 the local board finds totally and permanently prevents an employee from
8 performing a reasonable range of duties within the employee's department, was
9 incurred in the performance of the employee's duties and was the result of
10 any of the following:

11 (a) Physical contact with inmates, prisoners, parolees or persons on
12 probation.

13 (b) Responding to a confrontational situation with inmates, prisoners,
14 parolees or persons on probation.

15 (c) A job related motor vehicle accident while on official business
16 for the employee's employer. A job related motor vehicle accident does not
17 include an accident that occurs on the way to or from work. Persons found
18 guilty of violating a personnel rule, a rule established by the employee's
19 employer or a state or federal law in connection with a job related motor
20 vehicle accident do not meet the conditions for accidental disability.

21 2. "Accumulated member contributions" means the sum of all member
22 contributions deducted from a member's salary and paid to the fund, plus
23 member contributions transferred to the fund by another retirement plan
24 covering public employees of this state, plus previously withdrawn
25 accumulated member contributions which are repaid to the fund in accordance
26 with this article, minus any benefits paid to or on behalf of a member.

27 3. "Average monthly salary" means one-thirty-sixth of the aggregate
28 amount of salary paid a member by a participating employer during a period
29 of thirty-six consecutive months of service in which the member received the
30 highest salary within the last one hundred twenty months of service. Average
31 monthly salary means the aggregate amount of compensation paid a member
32 divided by the member's months of service if the member has less than
33 thirty-six months of service. In the computation under this paragraph, a
34 period of nonpaid or partially paid industrial leave shall be considered
35 based on the salary the employee would have received in the employee's job
36 classification if the employee was not on industrial leave.

37 4. "Beneficiary" means an individual who is being paid or who has
38 entitlement to the future payment of a pension on account of a reason other
39 than the individual's membership in the retirement plan.

40 5. "Claimant" means a member, beneficiary or estate that files an
41 application for benefits with the retirement plan.

42 6. "Credited service" means credited service transferred to the
43 retirement plan from another retirement system or plan for public employees
44 of this state, plus those compensated periods of service as a member of the
45 retirement plan for which member contributions are on deposit in the fund.

1 7. "Designated position" means:

2 (a) For a county:

3 (i) A county detention officer.

4 (ii) A nonuniformed employee of a sheriff's department whose primary
5 duties require direct contact with inmates.

6 (b) For the state department of corrections and the department of
7 juvenile corrections, only the following specifically designated positions:

8 (i) Food service.

9 (ii) Nursing personnel.

10 (iii) Corrections physician assistant.

11 (iv) Therapist.

12 (v) Corrections dental assistant.

13 (vi) Hygienist.

14 (vii) Corrections medical assistant.

15 (viii) Correctional service officer, including assistant deputy
16 warden, deputy warden, warden and superintendent.

17 (ix) State correctional program officer.

18 (x) Parole or community supervision officers.

19 (xi) Investigators.

20 (xii) Teachers.

21 (xiii) Institutional maintenance workers.

22 (xiv) Youth corrections officer.

23 (xv) Youth program officer.

24 (xvi) Behavioral health treatment unit managers.

25 (xvii) The director and assistant directors of the department of
26 juvenile corrections and the superintendent of the state educational system
27 for committed youth, ~~only if hired after July 1, 1992.~~

28 (xviii) The director, deputy directors and assistant directors of the
29 state department of corrections, ~~only if hired for any of these positions~~
30 ~~after July 1, 1998.~~

31 (xix) Other positions designated by the local board of the state
32 department of corrections or the local board of the department of juvenile
33 corrections pursuant to section 38-891, subsection E.

34 (c) For a city or town, a city or town detention officer.

35 (d) FOR AN EMPLOYER OF AN ELIGIBLE GROUP AS DEFINED IN SECTION 38-842,
36 FULL-TIME DISPATCHERS.

37 8. "Employee" means a person determined by the local board to be
38 employed by a participating employer in a designated position.

39 9. "Employer" means an agency or department of this state or a
40 political subdivision of this state which has one or more employees in a
41 designated position.

42 10. "Fund" means the corrections officer retirement plan fund.

43 11. "Fund manager" means the fund manager of the public safety
44 personnel retirement system.

1 12. "Local board" means the retirement board of the employer that
2 consists of persons appointed or elected to administer the plan as it applies
3 to the employer's members in the plan.

4 13. "Member" means any employee who meets all of the following
5 qualifications:

6 (a) Who is a full-time paid person employed by a participating
7 employer in a designated position.

8 (b) Who is receiving salary for personal services rendered to a
9 participating employer or would be receiving salary except for an authorized
10 leave of absence.

11 (c) Whose customary employment is for more than twenty hours each week
12 and for more than six months in a calendar year.

13 14. "Normal retirement date" means the first day of the calendar month
14 immediately following an employee's completion of ~~twenty-five~~ TWENTY years
15 of service, the employee's sixty-second birthday and completion of ten years
16 of service or the month in which the sum of the employee's age and years of
17 credited service equals eighty.

18 15. "Participating employer" means an employer which the fund manager
19 has determined to have one or more employees in a designated position or a
20 county, city or town which has entered into a joinder agreement pursuant to
21 section 38-902.

22 16. "Pension" means a series of monthly payments by the retirement
23 plan.

24 17. "Retired member" means an individual who is being paid a pension
25 on account of the individual's membership in the retirement plan.

26 18. "Retirement" means termination of employment after a member has
27 fulfilled all requirements for a pension.

28 19. "Retirement plan" or "plan" means the corrections officer
29 retirement plan established by this article.

30 20. "Salary" means the base salary or base wages, shift differential
31 pay and holiday pay paid a member in a designated position for personal
32 services rendered to a participating employer on a regular monthly,
33 semimonthly or biweekly payroll basis. Salary includes amounts that are
34 subject to deferred compensation or tax shelter agreements. Salary does not
35 include any remuneration or reimbursement other than as prescribed by this
36 paragraph.

37 21. "Service" means employment rendered to a participating employer as
38 an employee in a designated position. Any absence that is authorized by an
39 employer, including any periods during which the employee is on an employer
40 sponsored long-term disability program, is considered as service if the
41 employee returns or is deemed by the employer to have returned to a
42 designated position within the period of the authorized absence.

43 22. "Total and permanent disability" means a physical or mental
44 condition that is not an accidental disability, that the local board finds
45 totally and permanently prevents a member from engaging in any gainful

1 employment and that is the direct and proximate result of the member's
2 performance of the member's duty as an employee of a participating employer.

3 Sec. 2. Section 38-885, Arizona Revised Statutes, is amended to read:

4 38-885. Normal retirement; conditions and pension

5 A. A member may retire if the member:

6 1. Files a written application for normal retirement with the plan in
7 the form prescribed by the plan.

8 2. Ceases to be an employee before the date of retirement.

9 3. Meets one of the age and service requirements for normal retirement
10 prescribed in subsection B.

11 B. A member is eligible for a normal retirement pension if the member
12 satisfies one of the following requirements:

13 1. Is sixty-two years or older and has ten years of service.

14 2. Has ~~twenty-five~~ TWENTY years of service.

15 3. The sum of the member's age and years of credited service equals
16 at least eighty.

17 C. ~~On normal retirement as provided in this section~~ A MEMBER WHO MEETS
18 THE REQUIREMENTS FOR A NORMAL RETIREMENT PENSION AND WHO HAS TWENTY YEARS OF
19 CREDITED SERVICE IS ENTITLED TO RECEIVE A PENSION THAT EQUALS FIFTY PER CENT
20 OF THE MEMBER'S AVERAGE MONTHLY SALARY, EXCEPT THAT:

21 1. IF THE MEMBER RETIRES WITH MORE THAN TWENTY YEARS OF CREDITED
22 SERVICE THE FOREGOING AMOUNT SHALL BE INCREASED BY A MONTHLY AMOUNT EQUAL TO
23 TWO PER CENT OF THE MEMBER'S AVERAGE MONTHLY SALARY MULTIPLIED BY THE NUMBER
24 OF THE MEMBER'S YEARS OF CREDITED SERVICE IN EXCESS OF TWENTY YEARS, WITH PRO
25 RATA INCREASE FOR ANY FRACTIONAL YEARS, EXCEPT THAT IF A MEMBER RETIRES WITH
26 TWENTY-FIVE OR MORE YEARS OF CREDITED SERVICE THE FOREGOING AMOUNT SHALL BE
27 INCREASED BY A MONTHLY AMOUNT EQUAL TO TWO AND ONE-HALF PER CENT OF THE
28 MEMBER'S AVERAGE MONTHLY SALARY MULTIPLIED BY THE NUMBER OF THE MEMBER'S
29 YEARS OF CREDITED SERVICE IN EXCESS OF TWENTY YEARS, WITH PRO RATA INCREASE
30 FOR ANY FRACTIONAL YEAR.

31 2. IF THE MEMBER RETIRES PURSUANT TO SUBSECTION B BUT HAS LESS THAN
32 TWENTY YEARS OF CREDITED SERVICE, THE member is entitled to receive a pension
33 equal to the product of:

34 ~~1.~~ (a) Two and one-half per cent of the member's average monthly
35 salary.

36 ~~2.~~ (b) The member's credited service ~~to a maximum of thirty years.~~

37 D. In no case shall the amount of a member's pension exceed
38 ~~seventy-five~~ EIGHTY per cent of the member's average monthly salary. Such
39 limitation does not preclude cost-of-living increases granted by the
40 legislature.

1 Sec. 3. Section 38-893, Arizona Revised Statutes, is amended to read:
2 38-893. Local boards; powers and duties; rules; hearings;
3 administrative review

4 A. The administration of the plan and the responsibility for making
5 the provisions of the plan effective for each employer are vested in a local
6 board. The state department of corrections, the department of juvenile
7 corrections, each participating county sheriff's department, and each
8 participating city or town AND EACH PARTICIPATING EMPLOYER OF FULL-TIME
9 DISPATCHERS FOR ELIGIBLE GROUPS AS DEFINED IN SECTION 38-842 shall have a
10 local board. Each local board is constituted as follows:

11 1. For the state departments, two members who are elected by secret
12 ballot by members employed by that department in a designated position and
13 two citizens who are appointed by the governor. The director of the EACH
14 state department of corrections and the director of the department of
15 juvenile corrections shall each appoint one member to their respective THE
16 local board who is knowledgeable in personnel actions. Each state department
17 local board shall elect a chairman.

18 2. For each participating county, the chairman of the board of
19 supervisors, or his THE CHAIRMAN'S designee who is approved by the board of
20 supervisors, as chairman, two members who are elected by secret ballot by
21 members employed by the participating county in a designated position and two
22 citizens, one of whom shall be the head of the merit system if it exists for
23 the group of members, who are appointed by the chairman of the board of
24 supervisors with the approval of the board of supervisors.

25 3. For political subdivisions, the mayor or chief elected official or
26 a designee of the mayor or chief elected official approved by the respective
27 governing body as chairman, two members elected by secret ballot by members
28 employed by the appropriate employer and two citizens, one of whom shall be
29 the head of the merit system if it exists for the group of members, appointed
30 by the mayor or chief elected official and with the approval of the city
31 council or governing body of the employer.

32 B. The appointments and elections of local board members shall take
33 place with one elective and one appointive board member, as designated by the
34 appointing authority, serving a term ending two years after the date of
35 appointment or election and the other local board members serving a term
36 ending four years after the date of appointment or election. Thereafter,
37 every second year, and as a vacancy occurs, an office shall be filled for a
38 term of four years in the same manner as provided in this section.

39 C. Within ten days after the member's appointment or election, each
40 member of a local board shall take an oath of office that, so far as it
41 devolves on the member, the member shall diligently and honestly administer
42 the affairs of the local board and shall not knowingly violate or willingly
43 permit to be violated any of the provisions of law applicable to the plan.

44 D. Except as limited by subsection E, a local board shall:

1 1. Decide all questions of eligibility and service credits and
2 determine the amount, manner and time of payment of any benefit under the
3 plan.

4 2. Make a determination as to the right of a claimant to a benefit and
5 afford a claimant or the fund manager, or both, a right to a rehearing on the
6 original determination.

7 3. Request and receive from the employers and from members information
8 as is necessary for the proper administration of the plan and action on
9 claims for benefits and forward the information to the fund manager.

10 4. Distribute, in the manner the local board determines to be
11 appropriate, information explaining the plan which is received from the fund
12 manager.

13 5. Furnish the employer, the fund manager and the legislature, on
14 request, with annual reports with respect to the administration of the plan
15 that are reasonable and appropriate.

16 6. Appoint a medical board, which is composed of a designated
17 physician or clinic other than the employer's regular employee or
18 contractor. If required, the local board may employ other physicians to
19 report on special cases. The examining physician or clinic shall report the
20 results of examinations made to the local board, and the secretary of the
21 local board shall preserve the report as a permanent record.

22 7. Sue and be sued to effectuate the duties and responsibilities set
23 forth in this article.

24 E. A local board has no power to add to, subtract from, modify or
25 waive any of the terms of the plan, change or add to any benefits provided
26 by the plan or waive or fail to apply any requirement of eligibility for
27 membership or benefits under the plan.

28 F. A local board, from time to time, shall establish and adopt rules
29 as it deems necessary or desirable for its administration. All rules and
30 decisions of a local board shall be uniformly and consistently applied to all
31 members in similar circumstances.

32 G. An action by a majority vote of the members of a local board which
33 is not inconsistent with the provisions of the plan is final, conclusive and
34 binding on all persons affected by it, unless a timely application for a
35 rehearing or appeal is filed as provided in this article.

36 H. A claimant or the fund manager may apply for a rehearing before the
37 local board within the time period prescribed in this subsection. A claimant
38 or the fund manager shall file an application for rehearing in writing with
39 a member of the local board or its secretary within sixty days after:

40 1. The claimant receives notification of the local board's original
41 action by certified mail, by attending the meeting at which the action is
42 taken or by receiving benefits from the plan pursuant to the local board's
43 original action, whichever occurs first.

1 2. The fund manager receives notification of the local board's
2 original action by certified mail or by receipt of written directions from
3 the local board pursuant to its original action, whichever occurs first.

4 I. A hearing before a local board on a matter remanded from the
5 superior court is not subject to a rehearing before the local board.

6 J. Decisions of local boards are subject to judicial review pursuant
7 to title 12, chapter 7, article 6.

8 K. When making a ruling, determination or calculation, the local board
9 is entitled to rely on information furnished by the employer, the fund
10 manager, independent legal counsel or the actuary for the plan.

11 L. Each member of a local board is entitled to one vote. A majority
12 of the appointed and elected members is necessary for a decision by the
13 members of a local board at any meeting of the local board.

14 M. The local board shall adopt bylaws as it deems necessary. The
15 local board shall elect a secretary who may, but need not, be a member of the
16 local board. The secretary of the local board shall keep a record and
17 prepare minutes of all meetings, forward the minutes to the fund manager
18 within forty-five days after each meeting and forward all necessary
19 communications to the fund manager.

20 N. The employer shall pay the fees of the medical board and of the
21 local board's legal counsel and all other expenses of the local board
22 necessary for the administration of the plan at rates and in amounts as the
23 local board approves.

24 O. The local board shall issue directions to the fund manager
25 concerning all benefits which are to be paid from the employer's account
26 pursuant to the provisions of the fund. The local board shall keep on file,
27 in the manner it deems convenient and proper, all reports from the fund
28 manager and the actuary.

29 P. The local board and the individual members of the local board are
30 indemnified from the assets of the fund against any liability arising by
31 reason of any act, or failure to act, made in good faith pursuant to the
32 provisions of the plan.

33 Sec. 4. Section 38-902, Arizona Revised Statutes, is amended to read:

34 38-902. Joinder agreement

35 A. County detention officers and nonuniformed employees of a sheriff's
36 department whose primary duties require direct contact with inmates may
37 participate in this plan if the board of supervisors of the county enters
38 into a joinder agreement with the fund manager to bring such employees into
39 this plan. The joinder agreement shall be in accordance with the provisions
40 of this plan. All such employees shall be designated for membership in the
41 joinder agreement unless written consent to the contrary is obtained from the
42 fund manager.

43 B. City or town detention officers may participate in this plan if the
44 governing body of the city or town enters into a joinder agreement with the
45 fund manager to bring its detention officers into this plan. The joinder

1 agreement shall be in accordance with the provisions of the plan. The
2 governing body of the city or town shall designate all detention officers for
3 membership in the plan unless written consent to the contrary is obtained
4 from the fund manager.

5 C. FULL-TIME DISPATCHERS MAY PARTICIPATE IN THIS PLAN IF THE GOVERNING
6 BODY OR AGENCY OF THE EMPLOYER OF AN ELIGIBLE GROUP AS DEFINED IN SECTION
7 38-842 ENTERS INTO A JOINDER AGREEMENT WITH THE FUND MANAGER TO BRING ITS
8 FULL-TIME DISPATCHERS INTO THIS PLAN. THE JOINDER AGREEMENT SHALL BE IN
9 ACCORDANCE WITH THE PROVISIONS OF THIS PLAN. THE GOVERNING BODY OR AGENCY
10 OF THE EMPLOYER SHALL DESIGNATE ALL FULL-TIME DISPATCHERS FOR MEMBERSHIP IN
11 THE PLAN UNLESS WRITTEN CONSENT TO THE CONTRARY IS OBTAINED FROM THE FUND
12 MANAGER.

13 ~~C.~~ D. The new employer shall designate the groups of employees who
14 are eligible to participate in the plan and shall agree to make contributions
15 each year that are sufficient to meet both the normal cost of a level cost
16 method attributable to inclusion of its employees and the prescribed interest
17 on the past service cost for its employees.

18 ~~D.~~ E. As a condition of an employer's participation in this plan, the
19 employer, before the effective date of the participation, shall formally
20 terminate any existing retirement program on behalf of the designated
21 eligible employee group.

22 ~~E.~~ F. Before the execution of any joinder agreement each county
23 EMPLOYER contemplating participation in the plan shall have an actuarial
24 valuation made, which is payable by the county EMPLOYER, to determine the
25 estimated cost of participation in accordance with section 38-894.

26 ~~F.~~ G. Assets under any existing public employee defined benefit
27 retirement program, except a military retirement program, that are necessary
28 to equal the actuarial present value of projected benefits attributable to
29 the employer's designated employee group, calculated using the actuarial
30 methods and assumptions adopted by the existing public employee retirement
31 program, shall be transferred from the program to this fund no later than
32 sixty days after the employer's effective date. That portion of the
33 transferred assets that is attributable to employee contributions, including
34 interest credits, shall be properly allocated to each affected employee of
35 the employer and credited to the employee's initial accumulated contributions
36 in accordance with a schedule furnished by the employer to the fund manager.

37 Sec. 5. Transfer of assets

38 A. The director and assistant directors of the department of juvenile
39 corrections and the superintendent of the state educational system for
40 committed youth and the director, deputy directors and assistant directors
41 of the state department of corrections who are current active members of the
42 Arizona state retirement system on the effective date of this act become
43 members of the corrections officer retirement plan on the effective date of
44 this act unless written consent in the contrary is obtained from the fund
45 manager within sixty days after the effective date of this act.

1 B. Notwithstanding title 38, chapter 5, article 7, Arizona Revised
2 Statutes, for each member of the Arizona state retirement system who becomes
3 a member of the corrections officer retirement plan pursuant to subsection
4 A, the assets to be transferred from the Arizona state retirement system on
5 the effective date of this act to the corrections officer retirement plan and
6 fund on behalf of each member consist of the total amount of the member's
7 employee and employer contributions together with any supplemental credits
8 accrued plus interest to the date of transfer for all service credits on
9 account with the Arizona state retirement system.

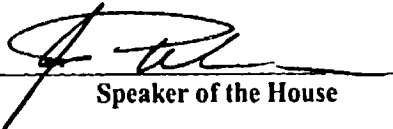
APPROVED BY THE GOVERNOR MAY 1, 2001.

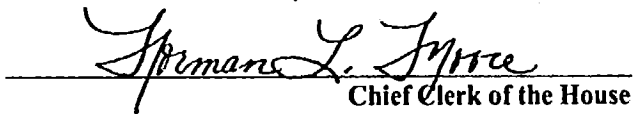
FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 2, 2001.

Passed the House April 24, 20 01,

by the following vote: 55 Ayes,

0 Nays, 5 Not Voting

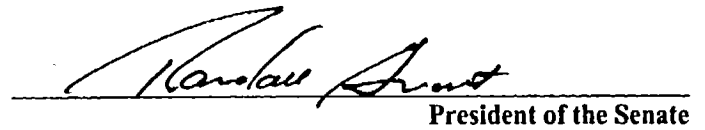

Speaker of the House

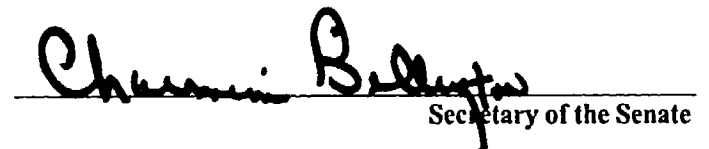

Chief Clerk of the House

Passed the Senate February 7, 20 01,

by the following vote: 24 Ayes,

6 Nays, 0 Not Voting


President of the Senate

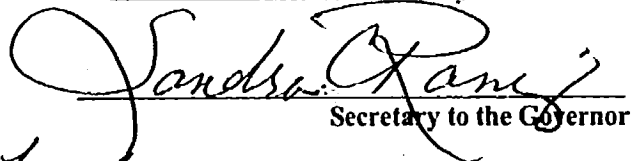

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

26 day of April, 2001,

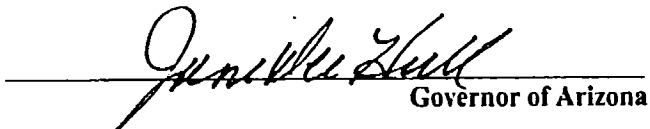
at 10:43 o'clock A M.


Secretary to the Governor

Approved this first day of

May, 2001,

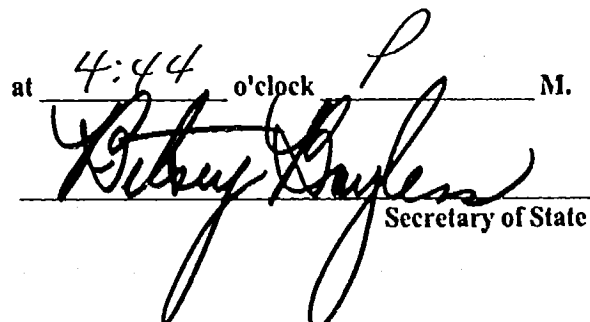
at 4:58 o'clock P M.


Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 2 day of May, 2001,

at 4:44 o'clock P M.

Secretary of State

S.B. 1129